3-2500-10601-2
E,G002/PA-95-500

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of Northern States Power Company's Petition for Approval to Merge with Wisconsin Energy Corporation	FINDINGS OF FACT AND RECOMMENDATION

MERGER SAVINGS AND FREEZE CONDITIONS

This segment of the above-entitled matter came on before Administrative Law Judge Allen E. Giles (the "ALJ") for evidentiary hearings on November 22 and 25, 1996 in the Large Hearing Room of the Minnesota Public Utilities Commission Suite 350, Metro Square, 121 Seventh Place East, St. Paul, Minnesota.

David A. Lawrence, Attorney at Law, 414 Nicollet Mall, Minneapolis, Minnesota 55401, and Samuel L. Hanson and Michael C. Krikava, Attorneys at Law, 2400 IDS Center, Minneapolis, Minnesota 55401, appeared on behalf of Northern States Power Company;

Brent L. Vanderlinden, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Department of Public Service;

Eric F. Swanson, Assistant Attorney General, NCL Tower, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Attorney General's Office.

Louis Sickmann and Betsy Engelking, Suite 350, Metro Square, 121 Seventh Place East, St. Paul, Minnesota 55101, appeared in a neutral capacity on behalf of the Minnesota Public Utilities Commission.

Notice is hereby given that, pursuant to Minnesota Statute § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exception to this report, if any, by any party adversely affected must be filed within twenty (20) days of the mailing date hereof or such other date as established by the Commission's Executive Secretary or as agreed to by the Parties with the Commission's Executive Secretary. Questions regarding filing of exceptions should be directed to Dr. Burl Haar, Executive Secretary, Minnesota Public Utilities Commission, Suite 350 Metro

Square, 121 Seventh Place East, St. Paul, Minnesota 55101. Exceptions must be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who requests such argument. Such request must accompany the filed exceptions or reply, and an original and 14 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commission as its final order.

STATEMENT OF ISSUES

In the Commission's Notice and Order for Hearing, the Commission identified issues that involved disputed facts which require further development through a contested case hearing. The five fact issues referred to contested case are:

> what are the expected Minnesota jurisdictional merger-related net savings by year for ten years following the merger?
>
> what are the characteristics of a reasonable electric rate freeze (e.g. exceptions, duration, etc.) in these circumstances?
>
> what is the Company's pre-merger revenue requirement, based on a 1996 test year adjusted for known pre-merger changes in 1997?
>
> to what extent will it be feasible for Primergy to use its transmission ownership and control of the MAPP-WUMS interface to restrict the flow of non-Primergy sales over its wires?
>
> what, if any, is the impact of such a restriction on Minnesota utilities other than Primergy?

Pursuant to the Prehearing Order, two fact issues were referred to this segment of the contested case hearings:

> What are the expected Minnesota jurisdictional merger-related net savings by year for ten years following the merger?
>
> What are the characteristics of a reasonable electric rate freeze (e.g. exceptions, duration, etc.) in these circumstances?

Based upon all of the proceedings herein, the Judge makes the following:

FINDINGS OF FACT

I. Procedural Background

A. Notice and Hearings

1. On August 4, 1995, Northern States Power Company ("NSP" or the "Company") filed its petition for approval of a merger with the Wisconsin Energy Corporation ("WEC") in the above-captioned matter.

2. On June 25, 1996, the Commission issued a Notice and Order for Hearing directing that a contested case proceeding pursuant to the Administrative Procedure Act, Minnesota Statute §§ 14.57 - 14.62 be held on the following issues raised in connection with the Petition:

> what are the expected Minnesota jurisdictional merger-related net savings by year for ten years following the merger?
>
> what are the characteristics of a reasonable electric rate freeze (e.g. exceptions, duration, etc.) in these circumstances?
>
> what is the Company's pre-merger revenue requirement, based on a 1996 test year adjusted for known pre-merger changes in 1997?
>
> to what extent will it be feasible for Primergy to use its transmission ownership and control of the MAPP-WUMS interface to restrict the flow of non-Primergy sales over its wires?
>
> what, if any, is the impact of such a restriction on Minnesota utilities other than Primergy?

3. On June 25, 1996, the Commission issued its Order Establishing Procedural Framework identifying the issues to be considered in the contested case proceeding and identifying additional issues which the Commission will resolve on the basis of the record of party comments, without contested case hearing or additional comment.

4. Petitions to intervene in this proceeding were filed pursuant to Minnesota Rules Part 1400.6200. The following were made parties to this proceeding: The Izaak Walton League, Minnesotans for an Energy Efficient Economy and the Environmental Law and Policy Center of the Midwest (The Environmental Coalition); the City of St. Paul; the Energy CENTS Coalition; Otter Tail Power Company; Minnesota Power; Wisconsin Public Service, Madison Gas and Electric, Wisconsin Electric Cooperative Association and

Citizen's Utility Board Wisconsin Intervenors); the International Brotherhood of Electrical Workers; Cooperative Power; and Dairyland Power. The Department of Public Service and the Office of the Attorney General-Residential Utilities and Antitrust Division (OAG) intervened as of right and also filed comments in this matter. A number of parties requested that the Commission set this matter for contested case hearing.

5. On August 5, 1996, Administrative Law Judge Allan W. Klein issued a Prehearing Order establishing the hearing schedule and procedural guidelines governing the conduct of the contested case proceeding. The Prehearing Order allowed for informal public hearings on dates and at locations to be determined.

6. Public hearings were scheduled. Such public hearings were held at the following locations on the date indicated:

Date	Time	Location
October 30, 1996	7:00 p.m.	Nisswa, Minnesota
November 4, 1996	7:00 p.m.	Mankato, Minnesota
November 15, 1996	1:00 p.m.	Minneapolis, Minnesota

7. The Prehearing Order also scheduled formal evidentiary hearings divided into three segments as follows: Flow control and competitive affects - November 18-21; Merger Savings and Freeze Conditions - November 22-27; Pre-Merger Revenue Requirement - December 2-6. The Prehearing Order scheduled the formal evidentiary hearings for the large hearing room, third floor, 121 Seventh Place East, St. Paul.

8. Evidentiary hearings were conducted for this segment of the contested case hearing on November 22 and 25, 1996. Nine witnesses provided pre-filed and/or oral testimony on behalf of the Parties: Mark Hervey (NSP), Thomas Flaherty (NSP), Jeffrey C. Robinson (NSP), Curtis Nelson (OAG), Catherine O'Connell (DPS), Allen Krug (DPS), Dale Lusti (DPS), Scott Brockett (DPS), and Edward Bodmer (DPS).

B. Prehearing Motions

9. On October 1, 1996, Administrative Law Judge Allan W. Klein entered his Order Denying Stay of Proceedings in response to the motion of the Environmental Coalition and the Citizens' Utility Board.

10. On November 20, 1996, Administrative Law Judge Allan W. Klein entered his Order on Prehearing Motions granting the motion of Otter Tail (and others) to allow the introduction of relevant portions of the FERC record; granting NSP's motion to strike certain intervenor pre-filed testimony; and granting in part the motion of Wisconsin Intervenors to introduce the record of the Public Service Commission of Wisconsin.

11. On December 3, 1996, Administrative Law Judge Allan W. Klein entered his Ordering Denying Stay and Certifying Petition to Commission in response to the

motion of the Environmental Coalition, Energy CENTS Coalition and the Citizens' Utility Board.

12. On December 3, 1996, Administrative Law Judge Allan W. Klein granted the motion of Commonwealth Edison to intervene out of time.

II. Assessment of Merger-Related Savings

13. The cost savings achievable by the merger of NSP and Wisconsin Energy is impossible to estimate with precision. Ex. 24, p. 11; Ex. 40, p. 4. The record of this proceeding demonstrates that there will be merger-related savings that will be substantial.

14. NSP's analysis of merger related savings for a ten-year period shows net savings of approximately $1.94 billion on a combined total company basis.

15. NSP determined the ten-year electric savings for the Minnesota electric jurisdiction will be as follows:

1997	$ 31,694,000
1998	39,506,000
1999	44,817,000
2000	55,990,000
2001	82,211,000
2002	81,596,000
2003	86,443,000
2004	91,645,000
2005	93,894,000
2006	99,179,000
Total	$706,975,000

16. DPS estimated a range of merger-related savings, on a combined, total company basis, in the range of $775.7 million to $1,168.7 million. DPS estimates first-year electric savings in a range of $13.4 million to $19.3 million, with an overall ten-year savings between $324 million and $455 million, for the Minnesota electric jurisdiction.

17. After careful and full consideration of the estimated savings advocated by DPS and NSP witnesses, the Administrative Law Judge finds that, except for the adjustments necessary for DPS witnesses O'Connell and Krug relating to gas cost savings and Production Dispatch, the expected Minnesota jurisdictional merger-related net savings, by year and for the ten-year period following the merger, are as follows:

1997	$ 31,694,000
1998	39,506,000
1999	44,817,000
2000	55,990,000

2001	82,211,000
2002	81,596,000
2003	86,443,000
2004	91,645,000
2005	93,894,000
2006	99,179,000
Total	$706,975,000[1]

DISCUSSION

The Commission directed the Parties to identify "the expected Minnesota jurisdictional merger-related net savings by year for ten years following the merger." Both the DPS and the Company have submitted proposals in response to the Commission's request.

NSP witness Thomas Flaherty provided testimony in support of the Company's proposal on merger-related savings. DPS witnesses Edward Bodmer, Dale Lusti, Catherine O'Connell and Allen Krug provided testimony in support of the Department's proposal. Finally, Curtis Nelson provided testimony in support of the OAG's position on merger-related savings.

Both DPS and NSP have made cost savings proposals based on an estimation of the cost savings due to the merger. The Administrative Law Judge has carefully considered the testimony of DPS and NSP witnesses regarding their cost savings proposals. After reviewing the positions of the Parties, the Judge is persuaded that the determination of the cost savings due to the merger requires considerable exercise of judgment. The Parties, including the OAG, appear to agree that estimating savings due to the merger is difficult and that any determination of cost is substantially affected by imprecision.

Recognizing the imprecision and judgment involved in creating each of the cost savings proposals, and recognizing that NSP must shoulder the risk of over-estimating the savings cost and, finally, recognizing that NSP has the burden of proving its cost savings proposals, the Judge has attempted to establish a process for determining whether or not NSP has established the reasonableness of its savings proposals. The Judge has applied the following analysis.

NSP will establish a reasonable basis for each of its cost savings proposal where:

a. There is no challenge to the methodology or process used by NSP in making the cost savings proposal;

b. NSP offers reasons for each cost saving proposal;

c. The reasons are supported by the record;

d. NSP makes a reasonable response to the concerns or challenges of the DPS or OAG.

In other words, the Judge believes that NSP will establish a reasonable basis for its cost estimate if the DPS does not challenge the methodology being used to arrive at the proposal, reasons supported by the record are offered for each proposal and the Company provides a reasonable response to the DPS.

The Judge finds that NSP's estimate of the merger-related cost savings has withstood the scrutiny of this analysis. Except for two cost savings issues raised by the testimony of DPS witnesses O'Connell and Krug, it is appropriate to use NSP's estimate of the merger-related cost savings for this case. Adjustments must be made for savings issues raised in the testimony of DPS witnesses O'Connell and Krug.

The methodology and process used by NSP to estimate the merger savings were generally accepted by DPS witnesses. DPS witnesses Edward Bodmer, Allen Krug and Dale Lusti raised specific issues with respect to individual cost savings categories and the savings level as a whole. Witness Bodmer's testimony focused mainly on concerns of the number of employee reductions, both from the consolidation of NSP-Wisconsin and Wisconsin Energy, and from the NSP-Minnesota and combined Wisconsin operations. He estimated fewer employee reductions than did NSP. Bodmer performed his own function-by-function analysis, and by comparing the NSP/WEC merger to prior mergers. He also testified that the merger is not needed to reduce employees at Eau Claire. DPS witness Krug testified that a majority of the non-labor nuclear savings are uncertain and reduces them from $112 million over ten years to $19.7 million over ten years. Finally, DPS witness Lusti reviewed several savings areas, concentrating mainly on categorizing the uncertainty of actually achieving the savings. He used the categories "expected", "uncertain" or "dubious". After categorizing in this manner, DPS witness Lusti assigned a percentage or probability to the savings area, and discounted the savings accordingly.

After consideration of DPS witnesses' testimony on a broad range of merger-related savings issues, the Judge is unpersuaded (except as otherwise indicated) by the Department's proposed adjustments for the following reasons. First, as a general matter, NSP has stated a reasonable basis for its proposals and the Department has not stated a substantial or major disagreement regarding the methodology and process used by NSP for estimating savings created by the merger. Second, the proposed estimated savings advanced by NSP appear to be deliberately conservative, recognizing the potential disadvantage to shareholders. Next, the Judge disagrees with DPS witness Bodmer's conclusion that the NSP Eau Claire office headquarters would have closed in the absence of the merger. The Judge believes that for operational and regulatory reasons, it is reasonable and wise for NSP to maintain a headquarters office in Wisconsin. The Judge believes that without the combination creating a new headquarters in Milwaukee, the Eau Claire office would not have been closed or proposed for closure. Finally, the DPS's introduction of concepts such as "dubious savings", "uncertain savings" and "expected savings", escalates the imprecision inherent to this process by introducing concepts which are themselves ambiguous.

DPS argues in its Reply Brief that NSP did not address the Commission's concern related to determining the extent to which the savings could be achieved without a merger. The Judge is unpersuaded by this argument because it does appear that NSP has considered and separated "stand alone" savings from merger-created savings. While describing its methodology, the Company identifies what it calls "developed savings". The Company defined "developed savings" as reductions in cost due to management decisions that could have been made on a stand-alone basis. Under the methodology used by the Company, developed savings were excluded from merger-created savings. Exhibit 37, 16-17. Contrary to DPS' claims, the Judge finds that NSP has considered and made an effort to exclude nonmerger-created costs consistent with the Commission's concerns.

OAG witness Curtis C. Nelson testified that the merger savings should be higher than NSP's estimate based on the actual achieved savings from prior mergers. Exhibit 25 at 10-11. OAG witness Nelson compared the instant merger to four other mergers where the actual savings achieved from the mergers averaged 26.5% above the estimated saving. He concludes that if the NSP merger is consistent with what has happened in those mergers, the NSP merger will produce larger savings than predicted. The Judge is unpersuaded that this claim, standing alone, is an appropriate basis for increasing the estimated merger-related savings. The claim is much too broad and does not take into consideration the unique circumstances that exist in this merger as compared to the others.

As mentioned earlier, the Judge has found two circumstances where NSP appears to have failed to respond to concerns expressed by the DPS. DPS witness Catherine O'Connell evaluated NSP's estimated gas supply savings to assess the likelihood of whether the savings could occur without the merger. She concluded that it is likely that the gas cost savings would occur without the merger because of the changing regulatory environment. Exhibit 28. NSP also appears to have failed to respond to DPS's challenge of the proposed savings related to Production Dispatch. NSP estimated that a single-system dispatch would result in a production-cost savings of $42 million over ten years. The Production Dispatch issue is discussed in the testimony of DPS witness Allen Krug. Exhibit 30. Mr. Krug concluded that due to changes in the regulatory environment, suppliers of generation services like NSP will attempt to execute transactions whenever savings are possible. As stand-alone entities, both NSP and WEC would attempt to maximize savings opportunities presented by their more active participation in the wholesale power market.

The Judge has been unable to find a response by NSP witnesses to the DPS testimony relating to gas cost savings and Production Dispatch. Based on the foregoing, the Judge has concluded that NSP has failed to establish the reasonableness of its cost savings with respect to Production Dispatch and gas cost savings.[2]

III. Rate Reduction and Characteristics of a Rate Freeze

18. NSP proposed a four-year electric rate freeze as a part of a rate plan package that also included a 1.5% reduction in rates. The electric rate freeze proposal was made to provide assurance to ratepayers that the merger between NSP and WEC would not be the cause of higher rates. Ex. 22 at 40. The plan contained two categories for exception: (1) Federal and State Taxes and (2) Extraordinary events. Id. at 41. Extraordinary events would have to increase expenses by more than 10% or $15 million over the previous year to trigger the exception to the rate freeze. The Company also agreed to expand the exception to a 15% change in the cost of common equity which equates to $33.6 million. Id.

19. The following factors should be taken into consideration when determining the appropriate rate reduction(s) and the duration and characteristics of any rate freeze:

(1) the rate decrease necessary to capture the estimated merger-related savings,

(2) the revenue deficiency or surplus under current rates,

(3) the benefits to customers from varying lengths of rate freezes in terms of risk reduction and inflation hedges,

(4) the allowed exceptions to the rate freeze, and

(5) the ability of the Department or other interested parties to request a rate investigation during the rate-freeze period.

Ex. 35 at 6-7.

20. Another factor that should be considered is whether or not the duration and characteristics of the rate freeze impose a reasonable level of risk on NSP. Ex. 23 at 3.

21. An appropriate rate reduction should capture both the merger-related savings and the revenue surplus or deficiency determined for this case. The rate reduction should also allow for a “cushion.” Because the Parties disagree as to whether NSP has a deficiency or surplus under current rates, that issue was litigated in another segment of this proceeding. Therefore, the amount of the rate reduction cannot be determined during this segment of the proceeding.

22. An electric rate decrease necessary to capture all the merger-related savings using NSP's savings estimates is 2.72%, however, this is not an appropriate rate reduction for this proceeding because it does not also contain a "cushion" and does not consider NSP's revenues under current rates. Ex. 35 at 8 and SBB-1.

23. A rate freeze will protect customers against the risk of expense and revenue volatility, particularly where the exceptions to the freeze can be limited. A rate freeze will provide rate certainty which is particularly beneficial to customers as a hedge against inflation. Ex. 35 at 9.

24. The DPS and NSP view their "rate reduction-rate freeze plans" as a single package. Within their plans the Parties agree that a rate freeze lasting four years is appropriate for this case. The Judge also finds that a four-year rate freeze is appropriate for this case.

25. The OAG, DPS and NSP generally agree that the exceptions to the freeze should be limited. They disagree somewhat on the characteristics of the exceptions.

26. Recognizing that not all extraordinary events can be identified in advance, it is nevertheless appropriate to establish (while the Parties' attention is focused and acute) specific guidelines concerning the exceptions to the rate freeze in this proceeding. It is understood that exceptions not identified will be handled on a case-by-case basis.

27. After careful consideration of the testimony, the Judge finds that the freeze characteristics proposed by DPS are reasonable and should be applied to the four-year rate freeze.

28. The following exceptions should apply for taxes:

a) Changes in property taxes should be excluded from the list of events qualifying as exceptions, since the Company can file for automatic recovery of such changes under Minn. Stat. § 216B.241.

b) Any exception for changes in tax rates should be based on the Company's combined federal and state income-tax rate.

c) Decreases in state and federal income-tax rates should also qualify as exceptions if they meet the same criteria that NSP proposes for tax increases -- 10 percent or $15 million.

d) Changes in sales taxes or franchise fees should not qualify as exceptions.

e) Exceptions for changes in income taxes should apply only to tax rates, not tax burdens.

29. The following exceptions should apply for extraordinary events:

a) An extraordinary event must go beyond the normal risks that shareholders assume as a cost of doing business.

b) An extraordinary event, it if is a cost increase, must be of a type normally allowed for recovery by the Commission in general rate cases.

c) An extraordinary event must result in cost increases (or revenue losses) large enough to potentially affect the utility's ability to provide reliable service.

d) NSP must demonstrate that it has taken all reasonable steps to mitigate any cost increases resulting from an extraordinary event.

e) The category of extraordinary events should also include events that would lower rates, as long as the event:

i) goes beyond the normal short-term reductions in costs or increases in revenues that shareholders are normally allowed to retain as compensation for their assumption of normal business risk, and

ii) meets the same financial threshold established for events that would increase rates, as modified by the Department.

f) The threshold for the category of extraordinary events should be an increase in a type of cost (or decrease in revenues) for NSP's Minnesota retail electric operations of either (i) $15 million (regardless of the percentage change) or (ii) 10 percent and $5 million over the previous year.

30. The following administrative standards should also apply:

a) NSP should file only one exception request each year.

b) NSP's filing should identify all proposed events in both categories, and include qualifying events that would lower, as well as raise, retail rates.

31. The rate design in effect at the time of commencement of the freeze should be maintained. An “exception” filing or any other filing that results in an increase or decrease in revenues should not also cause a change in rate design.

DISCUSSION

NSP witnesses Mark Hervey and Jeffrey C. Robinson provided testimony in support of the Company’s position on rate reduction and characteristics of a rate freeze. DPS witness Scott Brockett addresses this issue for the Department. Curtis Nelson provided testimony in support of the OAG’s position.

The Parties agree and the Judge concurs that an electric rate reduction and rate freeze, such as proposed by NSP, are appropriate prerequisites to the Commission's approval of the merger. Rate reductions and freezes can achieve two important objectives. First, they can allow customers to receive benefits that roughly reflect the estimated net savings resulting from the merger. Second, they can guarantee benefits to customers, regardless of the levels of savings the utility ultimately realizes. Since estimates of net savings cannot be predicted with 100% certainty, this guaranteed benefit to customers is important. Ex. 35 at 6.

The Parties disagree on the level of rate reduction appropriate for this case. Part of their disagreement has to do with whether or not NSP's revenue requirements under current rates reflects a revenue deficiency or surplus. The issue presented by this difference will be the subject of another segment of this contested case proceeding. The Parties' disagreement also arises from the level of "cushion" that NSP should have. A "cushion" will result in a rate deduction that will reflect less than 100% of the merger-related savings. Both NSP and DPS appear to agree that a cushion at some level is appropriate. In considering an appropriate rate reduction, the OAG and the DPS appear to recommend that the Judge and the Commission recognize the potential gains after the merger that may come from productivity improvement and efficiency measures and recognize that the anticipated merger savings will increase over the ten-year period. The Judge believes that these are reasonable factors to consider when determining the “cushion.”

Both the DPS and the Company have presented their proposed rate reduction and rate freeze characteristics as a package and have insisted that if their package is not adopted (either the rate reduction or the freeze characteristics), their proposal would be revaluated. For example, the DPS pointedly states that its proposed two percent rate reduction only applies if the freeze characteristics are "tightened" as recommended by DPS witness Brockett. Upon consideration of the rate freeze characteristics issues, the Judge agrees with the OAG that Minnesota ratepayers need to be assured that they actually receive the benefits claimed by the merger of NSP and Wisconsin Energy. A properly designed rate freeze should increase regulatory efficiency and save all Parties the time and money involved in typical rate cases. Tr. Vol. 3, p. 25. The Judge believes that for a rate freeze to have value to customers, it must have at least the following elements. First, a mechanism must exist to ensure that the Company's earnings do not become excessive during the period of the freeze; exceptions to the freeze must be extremely limited and the Company must maintain its rate design during the term of the freeze. Ex. 24, pp. 13-15; Ex. 26, p. 8.

The hallmark of the rate freeze should be stability in customer rates. Therefore, in the event that there is an "exception" filing that changes rates, the effect of this change should not be exacerbated by a realignment of customer class revenue responsibility. For the purpose of rate stability there should be no rate design changes during the period of the freeze.

The Judge finds that the Parties have substantially agreed on the characteristics of a rate freeze and there remain only minor differences. Upon review of these differences, the Judge has concluded that the DPS's proposals are reasonable and should be adopted. DPS witness Brockett proposed four qualitative criteria for determining whether a cost or revenue change qualifies as an extraordinary event The four qualitative criteria are as follows:

1. The extraordinary event goes beyond risk normally borne by shareholders;

2. The extraordinary event should be attributable to current customers;

3. The extraordinary event affects the utility's ability to provide reliable service; and

4. NSP must demonstrate that it has taken all reasonable steps to mitigate any cost increases resulting from an extraordinary event.

Ex. 36 at 4-8.

NSP witness Hervey agreed with one of the qualitative criteria but opposed the others. NSP agreed with the requirement that the Company must demonstrate that it has taken reasonable steps to mitigate the cost increases of an extraordinary event. With respect to the three other qualitative criteria, the Company disagreed on the basis that the criteria are vague. The Department agreed to change the language in criterion item 2 above to language proposed by the Company: "includable in a general rate case". With these changes the only remaining differences between the Department and NSP relate to items 1 and 3 above.

Upon consideration of these items, the Judge agrees with DPS. In order for the circumstances to qualify as “extraordinary events” the events must not occur in the ordinary course. If ordinary events qualify as exceptions then the rates are not truly frozen. Therefore, only costs and revenue changes that go beyond the risk normally borne by shareholders should qualify as an extraordinary event. Similarly, only a significant impairment in a utility's ability to provide reliable service should qualify as an extraordinary event.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Public Utilities Commission and the Administrative Law Judge have jurisdiction over the subject matter of this hearing pursuant to Minn. Stat. §§ 216B.50 and 14.57 - 14.62 and Minn. Rules Parts 1400.5100 - 1400.8300.

2. The Commission gave proper notice of the hearing in this matter, has fulfilled all relevant substantive and procedural requirements of law or rule and has the authority to take the action proposed.

3. As the Party proposing the action in this proceeding, NSP has the burden of establishing facts supporting it's proposals by a preponderance of the evidence. Similarly any other Party advocating an affirmative proposal has the burden of proving that proposal by a preponderance of the evidence. Minn. Rules pt. 1400.7300, subp. 5.

4. Except for the adjustments necessary for DPS witnesses O'Connell and Krug relating to gas cost savings and Production Dispatch, the expected Minnesota jurisdictional merger-related net savings, by year and for the ten-year period following the merger, are as follows:

1997	$ 31,694,000
1998	39,506,000
1999	44,817,000
2000	55,990,000
2001	82,211,000
2002	81,596,000
2003	86,443,000
2004	91,645,000
2005	93,894,000
2006	99,179,000
Total	$706,975,000

5. An appropriate rate reduction cannot be determined during this segment of the proceeding because the Parties disagree as to whether NSP has a deficiency or surplus under current rates.

6. The appropriate characteristics of a rate freeze are those proposed by the DPS as identified in Findings, paragraphs 27-30 and as amended by Findings, paragraph 31.

7. Any of the above Findings of Fact more properly considered Conclusions of Law are hereby adopted as such.

Dated this _____ day of January, 1997.

ALLEN E. GILES
Administrative Law Judge

Reported: Court Reported. Transcript Prepared By Shaddix & Associates, Suite 181, 9100 West Bloomington Freeway, Bloomington, Minnesota 55431

[1] This number must be adjusted for DPS's testimony regarding gas cost savings and Production Dispatch to give effect to the Judge's final finding on this issue.
[2] The Judge is uncertain of the dollar values per year to be assigned for these two issues.